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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/116,537 07/16/98 SAMARAS G 389301

PM82/0803

EXAMINER

ARK, D

ART UNIT	PAPER NUMBER
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3643

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/116,537

Applicant(s)

Samaras

Examiner

Darren Ark

Group Art Unit

3643



☒ Responsive to communication(s) filed on Jul 14, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-28 is/are pending in the application.

Of the above, claim(s) 3, 10-14, 18, and 19 is/are withdrawn from consideration.

☒ Claim(s) 15-17, 20-22, and 26-28 is/are allowed.

☒ Claim(s) 1, 7-9, and 23-25 is/are rejected.

☒ Claim(s) 2 and 4-6 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Jul 14, 1999 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Claims 3, 10-14, 18-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected Species. Election was made **without** traverse in Paper No. 4.

Drawings

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7/14/99 have been approved by the examiner.

Claim Rejections - 35 U.S.C. § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In reference to claim 23, the phrase "the counterbalancing means comprises a counterweight interconnected with the neck for balancing the head assembly in a neutral position" renders the claim vague and indefinite because the "counterbalancing means" was already set forth as "an arm connected to the neck at one end, and a weight at the opposite end". Also see claims 24 and 25 for similar problems.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thorsnes, Jr. 3,927,485.

Thorsnes, Jr. discloses a body housing (14), a head assy. with a head and neck (16 which is capable of being blown by the wind), connection means (46) which allows for movement through a range of motion by wind (capable of being blown by wind to move in a range of motion which is transverse to 46), and counterbalancing means including an arm (56) connected to the neck at one end (at 52), and a weight (54 & portion of body element 14) at the opposite end for balancing the head in a neutral position (56 balances against forces exerted via 24) within the range of motion with respect to the body housing at the connection means.

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8. Claims 1, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lanius 5,274,942.

Lanius discloses a body housing (14), a head assy. with a head and neck (30 which is capable of being blown by the wind), connection means (62, 70, 74, 66 & pins 78, 82) for connecting the head assembly to the body housing which allows for movement of the head through a range of motion by wind (capable of being blown by wind to move in a range of motion which is transverse to 58), and counterbalancing means including an arm (54) connected to the neck at one end (90), and a weight (34, 38, 42) at the opposite end (38) for balancing the head assembly in a neutral position (balances against forces exerted via 94) within the range of motion with respect to the body housing at the connection means.

In reference to claim 7, Lanius discloses a support stake (generally 114).

9. Claims 1, 7, 8 rejected under 35 U.S.C. 102(b) as being clearly anticipated by McKinney 4,965,953.

McKinney discloses a body housing (12), a head assy. with a head and neck (14 which is capable of being blown by the wind), connection means (38) for connecting the head assembly to the body housing which allows for movement of the head through a range of motion by wind (capable of being blown by wind to move in a range of motion which is transverse to 38), and counterbalancing means including an arm (40) connected to the neck at one end (42), and a weight (24) at the opposite end for balancing the head assembly in a neutral position (balances against forces exerted via

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46) within the range of motion with respect to the body housing at the connection means.

In reference to claim 7, McKinney discloses a support stake (generally 16).

In reference to claim 8, McKinney discloses a spring (40) attached to the upper end of the stake (at 24) against a seat (42).

Claim Rejections - 35 U.S.C. § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thorsnes, Jr. 3,927,485 in view of Balmer 5,191,730.

Thorsnes, Jr. does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of Thorsnes, Jr. in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

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12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanius 5,274,942 in view of Balmer 5,191,730.

Lanius does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of Lanius in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney 4,965,953 in view of Balmer 5,191,730.

McKinney does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of McKinney in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

Allowable Subject Matter

14. Claims 15-17, 20-22, 26-28 are allowed.

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15. Claims 23-25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

16. The following is an examiner's statement of reasons for allowance:

In reference to claim 15, the prior art of record does not disclose a method for using a decoy comprising attaching a hook to the housing above the open front end, attaching a loop to the neck, attaching a counterweight, by means of an arm, to the head and neck assembly, and hanging the head and neck assembly from the housing by placing the loop on the hook.

In reference to claim 21, the prior art of record does not disclose a decoy apparatus comprising connection means for connecting the head assembly to the body housing which allows for movement of the head, by wind, both up and down and side to side with respect to the body housing and counterbalancing means including an arm connected to the neck at one end, and a weight at the opposite end for balancing the head assembly with respect to the body housing at the connection means.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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17. Claims 2, 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

18. Applicant's arguments filed 7/14/99 have been fully considered but they are not persuasive.

In response to applicant's argument that "Neither Thorsnes, Jr., Lanius, nor McKinney teach or suggest a decoy...through a range of motion by wind and counterbalancing means...in a neutral position within the range of motion...", the Examiner argues that the three separate connection means and counterbalancing means of Thorsnes, Jr., Lanius, and McKinney are capable of both allowing movement through a range of motion by pivotal connections wherein the head can move thereabout in a direction transverse to the pivotal connections and balancing the head assembly in a neutral position within the range of motion by counterbalancing means which act against the forces applied to the control lines by the user which allows the head to assume a position intermediate the limits in the range of motion. Furthermore, each of the head assemblies of Thorsnes, Jr., Lanius, and McKinney are capable of being moved by the wind wherein the force of wind is a variable effect of nature which can range from a gentle breeze to hurricane force winds.

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Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Darren Ark** whose telephone number is **(703) 305-3733**. The examiner can normally be reached on **Monday-Friday** from **8:30-6:00**.

DWA *DWA*

July 31, 1999

Thomas Price
THOMAS PRICE
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